IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 530 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH JOITARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 530 of 1997

MR KG SHETH for Petitioner No. 1

MR ND GOHIL A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 02/08/2003

ORAL JUDGEMENT

1. The appellant was the accused in N.D.P.S. case no.3 of 1996 before the Additional Sessions Judge, SabarKantha, who, by his judgment and order dated 27th

March, 1997, convicted the appellant of the offence under Section 20 (B) of the N.D.P.S. Act, 1985 and sentenced him to undergo R.I. for four years and to pay a fine of Rs.40,000=00, in default S.I. for one year.

2. Previously, advocate Shri G. Ramkrishnan was appointed as amicus curiae to appear for the appellant. However, he has not turned up to argue the appeal. Hence, his appointment is ordered to be cancelled and advocate Shri K.G. Sheth is appointed as amicus curiae to appear for the appellant.

3. The charge against the appellant was that he was found with 7 kilo and 500 gms. of ganja on a public road near village Torda, Taluka Khushalpur.

4. The prosecution case is to be found in the evidence of the complainant P.S.I. - D.K. Patel (P.W.3). According to him, on 13th January, 1996, he was on duty as P.S.I. at Bhiloda. At about 5:00 o'clock, he, accompanied by members of his staff, left for village Bhiloda in connection with the investigation of an offence. When he arrived at village Torda, C.P.I. Jhala met him. At that time, they received information that a bearded person was coming from Rajasthan with ganja in his bag. Police Constable - Pratapsinh Jawansinh was sent to fetch two panchas. He brought Nathabhai and Kamaji as panchas. A preliminary panchnama was prepared, which was signed by the panchas and C.P.I. Mr.Jhala. Jamadar - Rupaji Kalaji, Mohan Manglabhai, Dalpatbhai Vechatbhai (P.W.4) and Prabhudas Virabhai were present. They kept watch and at that time a bearded person came walking from the direction of Khushalpur. On seeing the police he hesitated, but they cordoned and captured him. He was carrying a bag on his shoulder. On being questioned, he disclosed his name as Ramesh Joitaram Patel and said that he belonged to village Bharda, Taluka Vijapur, but at that time he was residing at Lakroda. C.P.I. Jhala disclosed his identity to him and asked him whether he wanted to be searched in the presence of any other gazetted officer, but the appellant said that it was not necessary. His bag was examined and searched in the presence of the panchas and two plastic bags tied with string were found. When the plastic bags were opened they were found to contain a substance smelling of ganja. When permit was demanded, the appellant said that he had no pass or permit to carry the same. Pratapsinh Jawansinh was sent to fetch a "tolat". He brought one Premji, who weighed the parcels and the substance was found to weigh 7 kilo and 500 gms. One parcel was put in a plastic bag and was sealed with the slips signed by the

panchas and C.P.I. Jhala. P.S.I. D.K. Patel lodged the complaint, which was recorded by the C.P.I. Jhala (P.W.6). The mudammal was sent to F.S.L. and after obtaining the report, chargesheet was filed in the Court.

5. At the trial, the panchas did not support the prosecution. However, the prosecution story was narrated by four witnesses; (1) P.S.I. D.K. Patel (P.W. 3); (2) C.P.I. Jhala (P.W.6); (3) Police constable Dalpatbhai Vechatbhai (P.W.4) and (4) Police constable Pratapsinh Jawansinh (P.W.5). The trial Judge found their evidence natural and saw no reason to disbelieve their evidence. The reports of the F.S.L. Exh. 26 and 27 show that the substance on analysis was found to be ganja as defined in N.D.P.S. Act, 1985.

6. Mr.K.G. Sheth learned advocate who appears for the appellant has taken me through the entire evidence on record. The evidence of the prosecution witnesses is natural and consistent and their testimony has remained unshaken in the cross examination. There is no reason to disbelieve them. No infirmity could be found in the prosecution case. The learned trial Judge was, therefore, justified in convicting the appellant of the offence charged to him. There is no substance in the appeal and the same is dismissed.

[M.C. PATEL, J.]

/phalguni/